

REMARKS-General

1. The newly drafted independent claim 16 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 16-32 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

Response to Rejection of Claims 1-15 under Obviousness Double Patenting

2. The applicant submits a terminal disclaimer herewith, in compliance with 37CFR1.321(c), to disclaim the terminal part of the statutory term of any patent granted on instant application which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,691,906, in order to overcome the rejection of the claims 1-15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 6, 8 or 13 of the U.S. Patent No. 6,691,906.

Regarding to Rejection of Claims 1-3 under 35USC102

3. Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

4. In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

5. However, the Brunstetter patent and the instant invention are not the same invention according to the fact that the independent claims 1 and 7 of the Brunstetter patent does not read upon the instant invention and the independent claim 16 of the instant invention does not read upon the Brunstetter patent too. Apparently, the instant invention, which discloses a taser holster, should not be the same invention as the Brunstetter patent which discloses a camera holster.

6. Accordingly, Brunstetter fails to anticipate the distinctive features of:

(i) first hook and loop fasteners provided on an outer side of the pouch panel and an inner side of the shielding flap respectively to retain the shielding flap at the closed position, wherein in the closed position, the first hook fastener is detachably fastened with the first loop fastener to securely attach the shielding flap to the pouch panel to enclose the top opening of the storage compartment for covering a butt of the taser so as to securely retain the taser in the storage compartment (as claimed in claim 16);

(ii) second hook and loop fasteners provided on the carrier and an outer side of the shielding flap respectively to retain the shielding flap at the open position, wherein at the opened position, the second fastener is detachably fastened with the second loop fastener to attach the shielding flap to the carrier for the taser being ready to quickly withdraw from the storage compartment without being interfered by the shielding flap (as claimed in claim 16);

(iii) the pouch panel having a curved top edge gradually increasing a height to a mid-portion thereof, wherein the pouch panel is adapted for holding the taser in the storage compartment at a predetermined position for either a right-hand user or a left-hand user to quickly withdraw the taser (as claimed in claim 17); and

(iv) a pad body that the pouch panel is overlapped thereon to form the storage compartment between the pad body and the pouch panel, and a belt hanger upwardly extended from the pad body for detachably fastening on a waist position of the user (as claimed in claims 18-19).

7. Brunstetter merely suggests a camera holster comprises a first fastener means on the front portion of the holster for detachably securing the flap over the holster to retain the device in the holster and a second fastener means near the upper end of the back portion for detachably securing the flap along the back portion and away from the opening of the holster so that the device may be readily withdrawn from the holster. Each of the first and second fastener means for securing the flap are each snap fasteners. The instant invention provides the first hook and loop fasteners to retain the shielding flap at the closed position and the second hook and loop fasteners to retain the shielding flap at the closed position. The applicant respectfully submits that the

snap fasteners are not equivalent to the hook and loop fasteners of the instant invention because the taser must be ready to be withdrawn from the storage compartment when the user is in an alert situation. In other words, the user is able to quickly flip and retain the shielding flap at the opened position by the second hook and loop fasteners such that the hand of the user is able to locate at the butt of the taser as a standby position to withdraw the taser. However, the snap fasteners of the Brunstetter CANNOT provide an instantaneous attachment of the flap. In addition, Brunstetter never mention any hook and loop fasteners can be alternatively used as the first and second fastener means throughout the specification and the drawings.

8. Brunstetter merely teaches the holster to hold the camera therein wherein the size and shape of the holster is designed for a right-hand user only, as shown in Figs. 1 and 6 of Brunstetter. It is apparent that Brunstetter fails to teach and anticipate the same recitation and limitation in the claim 17 of the instant invention of having a curved top edge of the pouch panel gradually increasing a height to a mid-portion thereof, the pouch panel is adapted for holding the taser in the storage compartment at a predetermined position for either a right-hand user or a left-hand user to quickly withdraw the taser.

9. In addition, the holster of Brunstetter is a pocket-like container without any mention of any pad body that the pouch panel is overlapped thereon to form the storage compartment between the pad body and the pouch panel, and a belt hanger upwardly extended from the pad body for detachably fastening on a waist position of the user.

10. Furthermore, one of the distinctive features of the shielding flap of the instant invention is to cover at the butt of the taser such that the shielding flap not only protects the taser from public sight, damaging abrasions and closes quarters grappling but also provides full flapped protection and retention for law enforcement use.

Response to Rejection of Claims 4-15 under 35USC103

11. The Examiner rejected claims 4-15 over Brunstetter in view of Yount, Naymark et al. and Domingos. Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained thought the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

12. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

13. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Brunstetter which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Yount, Naymark et al. and Domingos at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

14. Therefore, the difference between Brunstetter and the instant invention is not limited to the disclosure of “holster”, but includes the above distinctive features (i) to (iv). In addition, regarding to claims 20 to 32, the instant invention further contains the following distinctive features:

(v) an elongated durable belt having an affixing end affixed to said pad body and a free end detachably fastened at a portion of said durable belt to form a hanging loop for a waist belt of said user passing therethrough (as claimed in claims 20 to 21);

(vi) an attaching unit which comprises at least a fastening element provided on a rear side of said pad body for detachably attaching said pad body on a uniform of said user (as claimed in claims 22 to 23);

(vii) a securing unit which comprises first and second securing straps extended from said pouch panel and said shielding flap respectively, a buckle plug provided at a free end of said first securing strap, and a corresponding buckle socket provided at a free end of said second securing strap, wherein said buckle plug is detachably fastened with said buckle socket to securely lock up said shielding flap at said closed position for protecting said taser from close quarters grappling (as claimed in claims 24 to 28); and

(viii) a pocket flap overlapped between said pouch panel and said pad body to form a patch pocket, having a top open, provided in said storage compartment for placing accessories (as claimed in claims 29 to 32).

15. Yount merely suggests a tobacco pouch and accessory carrier. Naymark et al. merely suggests a multi-purpose carrier for portable electronic photographic equipment and the like. Domingos, on the other hand, suggests a sportsman's multipurpose utility pouch. Neither Yount, Naymark, nor Domingos teaches how to securely hold the taser in the storage compartment without interfering the taser withdrawing action and how to quickly attach the taser holster on the user's body that either right-hand or left-hand user can withdraw the taser from the taser holster.

16. The Examiner appears to reason that since Brunstetter teaches a holster for holding a camera, it would have been obvious to one skilled in the art to modify a carrying device for carrying the holster on the user's body. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so

modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.”) *In re Laskowski*, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), (“Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, “[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.”)

17. In the present case, there is no such suggestion. Brunstetter, Yount, Naymark, and Domingos perform very different types of pouch. In any case, even combining Brunstetter, Yount, Naymark, and Domingos would not provide the invention as claimed -- a clear indicia of nonobviousness. *Ex parte Schwartz*, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), (“Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed.”).

18. Applicant believes that neither Brunstetter, Yount, Naymark, nor Domingos, separately or in combination, suggest or make any mention whatsoever of the taser holster having the distinctive features (i) to (viii).

19. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

The Cited but Non-Applied References

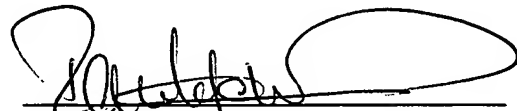
20. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

21. A check in an amount of US\$65.00 is submitted herewith to pay the statutory disclaimer fee. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 502111.

22. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 16-32 at an early date is solicited.

23. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,




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CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

Date: December 28, 2004

Signature: 
Person Signing: Raymond Y. Chan